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In the

Supreme Court of the United States.

OCTOBER TERM, 1951.

No.

PROVIDENCE FRUIT & PRODUCE BLDG., INC., ET AL.,
PETITIONERS,
v.
GAMCO INCORPORATED,
RESPONDENT.

BRIEF FOR RESPONDENT IN OPPOSITION ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OPINIONS BELOW.

The opinion of the United States District Court for the District of Rhode Island (R. 421-441) is not reported. The opinion of the Circuit Court of Appeals for the First Circuit is reported at 194 F. (2d) 484.

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on February 13, 1952. A petition for rehearing filed on March 6, 1952 was denied on March 17, 1952. The jurisdiction of this Court is invoked under 28 U.S.C., section 1254 (1).

QUESTIONS PRESENTED:

I. By the Case:

1. Did petitioners' refusal to grant to tenant Gamco a renewal of its lease in the Produce Building coupled with petitioners' ouster of Gamco from said Building, based as that refusal and ouster were on the transfer of Gamco's stock to out-of-state interests, constitute a violation of the anti-trust laws?

2. Is the covenant restricting the right of tenants in the Produce Building to transfer any interest in their business, which covenant is inserted in all Produce Building leases, violative of the anti-trust laws as part of a plan by petitioners to exclude outside competition?

II. By the Petition for Writ of Certiorari:

1. Is the decision of the Court of Appeals in conflict with the decisions of this Court in the following cases:

United States v. *Terminal Railroad Association of St. Louis*, 224 U.S. 383.
Associated Press v. *United States*, 326 U.S. 1.
Apex Hosiery Co. v. *Leader*, 310 U.S. 469.
Standard Oil Co. of California v. *United States*, 337 U.S. 293.
United States v. *Yellow Cab Co.*, 338 U.S. 338.

2. Did the decision of the Court of Appeals settle a heretofore undecided question of federal law?

STATUTE INVOLVED.

The pertinent provisions of the Sherman Act are set forth in the Petition at page 9.

STATEMENT OF THE CASE.

The undisputed salient facts, some of which do not appear in the petitioners' Statement of the Case (Petition, pp. 3-8), are disclosed by the Agreed Statement of Facts (R. 18-48) and by various stipulations between the parties, as follows:

The Providence Fruit and Produce Building, Inc., is a Rhode Island corporation organized in 1927 to form and to operate "a terminal market" for receiving and selling fruit, produce and foodstuffs (R. 22-23). Respondent Gamco is a Rhode Island corporation organized in 1946 as the successor of the carload receiving business conducted for many years at the Produce Building by G. A. Mercurio & Co. (R. 29). On April 15, 1946, the Board of Directors of the Produce Building, having conducted a thorough investigation of the organization and corporate structure of Gamco Incorporated, granted Gamco a one-year lease of four units of space in the Produce Building (R. 29-30).

The Produce Building services the consuming area known as "Metropolitan Providence" estimated to contain between 700,000 and 1,000,000 consumers (R. 25). The Building is the *only* facility in the entire Metropolitan Providence area equipped with the trackage, platform-display space, storage and unloading space necessary to handle interstate rail[1] shipments of fresh fruit and produce (R. 25). The Produce Building makes possible the concentration to a great extent of the wholesaling of all carloads of fresh fruit and produce in one large market (R. 24). Many jobbers, institutional buyers and retail buyers in Metropolitan Providence, and many from New Bedford and Fall River, Massachusetts, come to the Produce Building every day in order to make purchases from the receivers in wholesale quantities (R. 25). To be a carlot receiver in the Metropolitan Providence area, a person must be able to receive carload shipments at a place where the jobbers, institutional buyers and retail buyers habitually congregate every day (R. 26).

The board of directors of the Produce Building has the sole power to determine which merchants shall be allowed

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[1] From November to April, approximately 80% of fruits and vegetables arriving in Providence for distribution and sale in Rhode Island by wholesalers arrives by rail and 20% by truck; from May to October, about 50% arrives by rail and 50% by truck (R. 120).

to lease space in that building (R. 24). No standards of eligibility for tenancy in the building are set up or provided for in the books and records of either stockholders or directors of the Produce Building (R. 345). However, at various times petitioners imposed upon would-be tenants restrictions which were specifically directed against out-of-town or out-of-state merchants. Thus, in 1931, two would-be tenants of the Produce Building orally agreed at a meeting of the board to sign leases with a proviso stating that the sale of any stock in their companies to out-of-town interests would cancel the leases (R. 27, 67). In 1944, all leases for a tenancy in the Produce Building contained a clause forbidding the lessee to transfer an interest in his business "to any person not a bona fide resident" of Rhode Island without the written consent of the lessor (R. 216, 403). Again in 1946 a lease was granted to a Rhode Island carlot receiver with the proviso that a sale of any part of its stock to an out-of-town interest would automatically entitle the board to cancel the lease (R. 27). Earlier, in 1936, the board had voted to insert in all future leases granted for tenancy in the Produce Building, the following clause:

> "The Lessee covenants and agrees . . . that (he) shall not transfer or permit to be transferred any interest in the business carried on by (him) in said leased premises to any other person without the consent in writing of the Lessor. In the event that said Lessee shall transfer or permit to be transferred any such interest to any other person without the consent in writing of the Lessor, or, if the Lessee being a corporation, there shall be any change in share ownership by sale or transfer or any issue of shares, then, in either event said lease may at the option of the Lessor be terminated therewith." (R. 28)

That clause was inserted in every lease thereafter granted by the board, including the lease granted in 1946 to Gamco.

At the inception of Gamco, its organizers secured financial assistance from Sawyer & Co., Inc., a wholesale fruit and produce house doing business mainly in Boston, Massachusetts. The shareholders pledged their shares to Sawyer & Co., Inc. as security but, at the behest of the board of the Produce Building, expressly reserved unto themselves the right to vote those shares at all meetings of Gamco (R. 29, 100). When it became evident to the operators of Gamco that the firm would be unable to meet its financial obligations to Sawyer & Co., Inc. a substantial majority of Gamco's common stock was transferred as of record to that company (R. 30). On September 12, 1947, Sawyer & Co. voluntarily notified the board of the Produce Building by letter that such action had been taken (R. 30, R. 396: Ex. No. 6, R. 108).

Since April 14, 1947, the date of expiration of its original lease, Gamco's repeated applications for renewal have been uniformly denied (R. 30). On October 9, 1947, the board of the Produce Building adopted a resolution which set forth that the Produce Building, under the terms of the lease it had granted, had the right to terminate Gamco's tenancy in the event of a change in the share ownership of Gamco, and that as Sawyer had become the owner of a majority of Gamco's stock it was resolved that said tenancy be terminated and Gamco be notified to quit on December 31, 1947 (R. 13-15). In 1948 the Produce Building commenced an action of trespass and ejectment against Gamco in the courts of the State of Rhode Island.[1] While that suit was pending, Gamco filed its complaint against petitioners herein, alleging that its ouster from the Produce Building was in violation of the Sherman Act.

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[1] *Providence Fruit & Produce Bldg. Inc.*, v. *Gamco Inc.*, 68 A. 2d 20, in which judgment was entered for the Produce Building.

SUMMARY OF ARGUMENT.

The Court of Appeals correctly held that by virtue of their control of the Produce Building, petitioners occupied a monopoly position which they abused in violation of the provisions of the Sherman Act, by excluding competitor Gamco from the economic advantages of tenancy in the Building without any business justification at all. The decision of the Court of Appeals is not in conflict with any of the decisions of this Court which, in interpreting the Sherman Act, has consistently asserted that it is unlawful to exclude or try to exclude, outside competition. *Montague* v. *Lowry*, 193 U.S. 38; *United States* v. *Griffith*, 334 U.S. 100, 107. The application of the anti-trust laws to the ouster of Gamco by petitioners does not represent a new interpretation of federal law with respect to contracts between landlords and tenants. This Court has never hesitated to curtail the freedom of any monopolist's contractual activity, whether that monopolist be landlord, society or business corporation, whenever the existence and consequent evils of monopoly power are demonstrable. *Addyston Pipe & Steel Co.* v. *United States*, 175 U.S. 211, 228-235; *Fashion Originators' Guild* v. *Federal Trade Commission*, 312 U.S. 457, 668; *International Salt Co.* v. *United States*, 332 U.S. 392.

ARGUMENT.

I. The Decision of the Court of Appeals is Correct.

The Court of Appeals held that by their control of the Produce Building market, petitioners enjoy a monopoly position and that, therefore, their refusal to renew Gamco's lease and their ouster of Gamco from the Produce Building without any business justification constituted a violation of the Sherman Anti-trust Act. The Court based the foregoing conclusions of law on the *undisputed* facts of the case which disclose that the Produce Building is the only market

now in existence in Providence conjoining the rail, shipping and storage facilities necessary to the conduct of a carlot receiving business in fruit and produce, that the buyers habitually congregate at the Building, that local trade is centered there, and, finally, that the only reason Gamco was expelled from the Building was because it had transferred an interest in its business to Sawyer & Co., a Boston, Massachusetts firm. The Court of Appeals held as a matter of law that this explanation for the expulsion of Gamco from the Produce Building did not represent a reasonable business justification for such ouster.

Respondent submits that the decision of the Court of Appeals in the instant case is completely consonant with the principles of anti-trust law expounded and applied by the various Courts of Appeal in the following cases:

William Goldman Theatres, Inc. v. *Loew's, Inc., et al.*, 150 F. 2d 738 (C.C.A. 3) *cert. den.* 334 U.S. 811;

American Federation of Tobacco Growers v. *Neal*, 183 F. 2d 869 (C.C.A. 4);

United States v. *Tarpon Springs Sponge Exchange*, 142 F. 2d 125 (C.C.A. 5);

Patterson v. *United States*, 22 F. 599 (C.C.A. 6), *cert. den.* 238 U.S. 635.

The foregoing cases are all in accord in holding that one of the main purposes of the Sherman Act is to uphold and protect the competitive system of business enterprise in our democracy and to promote freedom of competition so that the channels of interstate and foreign commerce remain open and untrammeled. Specifically, those cases hold that the provisions of the Sherman Act are contravened when competitors are denied the right of equal opportunity to trade in a functioning market by those in control of the market who seek to further, by such exclusion, their own economic advantages via the monopoly route.

Petitioners admit to a certain confusion on their part in understanding the opinion of the Court of Appeals (Petition, p. 27). It is submitted that throughout the Petition and Supporting Brief a basic confusion is apparent with respect to the distinction between findings of fact and conclusions of law. (As stated above, *supra*, p. 6, the Court of Appeals based its legal conclusions on *undisputed* facts; it disagreed with the District Court in the application of the Sherman Law to those facts.[1]) Petitioners' Statement of the Case (Petition, pp. 3-8) which purports to set forth "findings of fact" by the District Court includes mixed statements of fact and law; the one "Question Presented" (Petition, pp. 8-9) merely presents fifteen conclusions of law designated as "evidence";[2] petitioners' fourth reason urging that a writ of certiorari be granted (Petition, pp. 11, 27-29) quarrels with the decision of the Court of Appeals because it is premised upon "facts" — which are actually conclusions of law — which differ from "findings" of the District Court, which "findings" are actually legal conclusions; the Supporting Brief sets forth "controlling findings" made by the District Court (pp. 24-25) which again are conclusions of law by the trial court declared erroneous by the Circuit Court. From this tangled morass, one fact only seems clear: petitioners find fault with the decision of the Court of Appeals because it is not in their favor.

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[1] However, the Court of Appeals did not accept even the findings of fact by the District Court *in toto*, as contended by petitioners (Petition, p. 3); its opinion merely states that reversal does not require the Court "to modify substantially" any of the facts as found by the trial court.

[2] *Cf.* Rule 38 (2), Rules of Practice, Supreme Court of the United States.

II. There is No Conflict of Decision.

Four of the five reasons proffered by petitioners in support of their petition for a writ of certiorari (Petition, pp. 10-12) actually present only one question: Is the decision of the Court of Appeals in conflict with certain decisions of this Court?

1. Petitioners state (Petition, p. 10) that the decision of this Court in *United States* v. *Terminal Railroad Association of St. Louis, supra,* turned on the "indispensable" aspect of the terminal facilities involved therein, while in the instant case the Produce Building market is "merely a favorable facility," and argue that the holding that exclusion of Gamco from such a facility is a violation of the Sherman Act conflicts with the *Terminal Railroad Association* case and is an "extension of the indispensable facility rule laid down" in that case (Petition, p. 16).

In *Associated Press* v. *United States, supra,* this Court rejected "indispensability" as a test, stating (at p. 18) that it "would fly in the face of the language of the Sherman Act and all of our previous interpretations of it." Moreover, in the *Terminal Railroad Association* case, it was pointed out (p. 395) that "The cost of construction and maintenance of railroad bridges over so great a river makes it unpracticable for every road desiring to enter or pass through the city to have its own bridge." In other words, the Court in that case recognized that alternatives were available but that the hardship entailed in taking advantage of such alternatives was the very factor stamping the control of the Terminal Railroad Association as an invalid monopoly. To the same effect is the holding in *United States* v. *Pullman Co.,* 50 F. Supp. 123 (D.C.E.D. Pa., 1943) where the three-judge court declared, at p. 134:

> "The economic and physical obstacles present to prevent an individual railroad from escaping the Pullman monopoly by itself supplying service are as great as the geographical obstacles which the Court found

determinative in *United States* v. *Terminal Railroad Association of St. Louis*, 224 U.S. 383 (1912), 32 S. Ct. 507, 56 L. Ed. 810."

Petitioners' Argument (p. 14) urges that "among the facts found by the trial court was the fact that there were other available facilities for carrying on the fruit and produce business in the Providence area." However, the Court of Appeals pointed out that petitioners and respondent sharply disputed the desirability of sites other than the Produce Building as well as of facilities upon them if and when developed. "But," the Court's opinion states, "it was not questioned that they were not now developed or that the local trade was at present centered in this building."[1] In the *Terminal Railroad Association* case, the opinion emphasized the physical nature of the terrain as a compelling factor rendering use of the Terminal facilities of vital significance. In the instant case, the economic factor inherent in the business pattern established by the centralized market erected at the Produce Building is equally compelling. In both cases, it is obvious that the construction of equal facilities elsewhere would be an undertaking of prohibitive expense and difficulty.

2. Petitioners argue that the decision of the Court of Appeals misstates and conflicts with the holding of *United States* v. *Associated Press* (D.C.S.D.N.Y.), 52 F. Supp. 362; affirmed, 326 U.S. 1. According to petitioners, in that case each news gathering service was held to be *sui generis* and therefore alternatives could not possibly exist. Petitioners conclude that to apply the *Associated Press* case to the facts in the case at bar, "*i.e.*, where there is no indispensable facility and there are other available facilities" is to rule

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[1] In *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U.S. 498, 503 this Court stated: "It is not for us to invite review by this Court of decisions turning solely on evaluation of testimony."

against the reasoning in the *Associated Press* case (Petition, p. 19).

It is not necessary here to debate petitioners' interpretation of the *Associated Press* case regarding the characterization of the nature of the commodity produced by news gathering organizations. As this Court's opinion stated in that case (at p. 17):

> ". . . monopoly is a relative word. If one means by it the possession of something absolutely necessary, to the conduct of an activity, there are few . . . Most monopolies . . . give control over only some means of production for which there is a substitute; the possessor enjoys an advantage over his competitors, but he can seldom shut them out altogether;"

The short answer to petitioners' contention is that the Court of Appeals held, and the Agreed Statement of Facts recites (R. 25), that the Produce Building is the only market presently existing in Providence where the shipping, display, storage and rail facilities necessary to conduct a carlot receiving business in fresh fruit and produce are available. Furthermore, the opinion of the Court of Appeals and the Agreed Statement of Facts (R. 25) point out that buyers habitually congregate there, thus concentrating trade in the Building (R. 24). Therefore, there are no realistic alternatives and for all intents and purposes, the Produce Building is as unique a market facility in Providence as petitioners contend the news gathering agency was in the *Associated Press* case.

3. Petitioners' third reason for urging that a writ of certiorari be granted is that since "no public injury was found in the case at bar," the decision of the Court of Appeals conflicts with the holdings in *Apex Hosiery Co.* v. *Leader, supra* and *Standard Oil Co. of California* v. *United States, supra* (Petition, pp. 11, 20-24).

In the *Apex* case, it was emphasized (p. 496) that the

protection of free competition is a basic purpose of the Sherman Act. When this freedom is suppressed, injury to the public results. In the instant case, Gamco was one of the three produce firms which handled the bulk of rail shipped fruit and produce at the Produce Building (R. 230, 239). It had 275 to 300 buyers on its books (R. 274), and in 1946, 1947 and 1948 did approximately a million dollars gross business a year (R. 291). It is apparent, accordingly, that Gamco's elimination from the Produce Building affected the competitive carlot receiving business in Providence, with consequent repercussions on the consuming public.

In *Mandeville Island Farms* v. *American Crystal Sugar Co.*, 334 U.S. 219, this Court stated (at p. 236) that the Sherman Act "is comprehensive in its terms and coverage, protecting all who are made victims of the forbidden practices by whomever they may be perpetrated." The private right of action afforded by the Act, in protecting the injured individual also protects the competitive system which the Act upholds.[1] This Court has often stated that a prime purpose of the Sherman Act is to secure "equality of opportunity," *United States* v. *American Linseed Oil Co.*, 262 U.S. 371, 388; *Ramsay Co.* v. *Associated Bill Posters*, 260 U.S. 501, 512. This purpose is thwarted if group power is utilized to eliminate a competitor who is equipped to compete. *William Goldman Theatres, Inc.* v. *Loew's, Inc.*, *supra.*

4. Petitioners urge fourthly that the decision of the Court of Appeals is in conflict with *United States* v. *Yellow Cab Co.*, *supra*, in which this Court stated that "Findings as to the design, motive and intent with which men act de-

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[1] . . . a free private enterprise system requires a competitive market. Free competition is, so to speak, the price of freedom of enterprise. It is the basic condition on which society, for its own protection, permits private enterprises to assume the responsibility and exercise the power of organizing the productive activities on which the life of the community depends." Stocking & Watkins, *Monopoly & Free Enterprise*, N.Y. The Twentieth Century Fund, 1951, p. 5.

pend peculiarly upon the credit given to witnesses by those who see and hear them." In the instant case, the trial court's finding that

> "The credible testimony does not convince me that the defendants monopolized or attempted to monopolize nor that they combined or conspired to monopolize any part of interstate commerce in violation of section 2 of the Sherman Act." (R. 437)

is based on acceptance of the oral testimony offered by petitioners. What was that testimony? A denial of any policy to exclude competitors coupled with an express statement that certain competition *was* excluded because of the fear that it would be too difficult to compete with. (R. 192.) In addition, the corporate records are documentary evidence that petitioners continuously pursued a policy specifically excluding out-of-state fruit and produce carlot receivers. Some instances of this policy are cited in the opinion of the Court of Appeals. Respondent respectfully submits that that Court was correct in applying the rule stated in *United States* v. *U.S. Gypsum Co.*, 333 U.S. 364 at page 395, and in reversing the mistaken judgment of the District Court.

III. There is Involved No Undecided Question of Federal Law.

The Fifth reason urged by petitioners for granting a writ of certiorari (Petition, p. 12) is that the decision of the Court of Appeals extends the applicability of the Sherman Act beyond the decisions of this Court. In their Supporting Brief, petitioners further argue (p. 31) that the decision of the Court of Appeals impairs a contractual right of the Building Corporation and establishes a new concept in the law of landlord and tenant not heretofore sanctioned by application of the anti-trust laws.

It is generally considered a well established and fundamental principle of law that the private right to contract is

limited by restrictions imposed for the public weal. Indeed, the favored definition of "freedom" in our times is liberty to act according to one's wishes insofar as such action does not trespass upon the similar liberty granted one's fellow citizens. This Court, in interpreting the Sherman Act, has restricted freedom of contract in the following cases,[1] among others:

U.S. v. *Griffith, supra* (agreements between motion picture theater operators and film distributors held violative of the Sherman Act because of restraint of competition);

International Salt Co., Inc. v. *U.S., supra* (contract between lessor and lessee respecting use of patented machinery under lease held in contravention of anti-trust laws);

Fashion Originators Guild of America, Inc. v. *Federal Trade Commission, supra* (agreements of trade society requiring participants to agree to boycott program held violative of Sherman Act).

It is therefore evident that when contractual activity runs afoul of the proscriptions of the Sherman Act this Court is not reluctant to curtail such activity whatever the category of the contractor.

In the *International Salt* case the Court stated, at pages 397-398:

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[1] See, also, in another context, *Nebbia* v. *New York*, 291 U.S. 502, 523: "Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest."

"Of course, a lessor may impose on a lessee reasonable restrictions designed in good faith to minimize maintenance burdens and to assure satisfactory operation. . . . Rules for use of leased machinery must not be disguised restraints of free competition, though they may set reasonable standards which all suppliers must meet."

What is the contract restriction, the breach of which is tendered by petitioners as the "well-founded legal reason" (Petition, p. 31) justifying the ouster of Gamco from the Produce Building? It is simply the covenant (*supra*, p. 4) in all Produce Building leases, restricting the rights of tenants to transfer interests in their business. However, although the restrictive clause itself provides that the board of the Produce Building, in the event of a transfer of interest by a tenant, has the *option* to terminate the tenant's lease, no discussion was held by the board regarding the desirability of having Sawyer & Co., to whom Gamco had transferred a majority of its shares, represented in the Produce Building (R. 217-218). The eviction resolution summarily states that Gamco, having transferred a majority of its shares to Sawyer of Boston, must leave the Building (R. 13-15). In view of the fact that petitioners had testified that Sawyer & Co. enjoyed a good, substantial reputation and financial standing in the trade (R. 172), petitioners alleged justification of Gamco's ouster is hardly plausible. The effect, intended and accomplished, of the restrictive covenant was to restrain the entry into the Produce Building of out-of-state carlot receivers. By thus contracting with all tenants of the Produce Building, petitioners made certain that they would be informed concerning any new firm acquiring any interest in a tenant's business. By virtue of the restriction, petitioners were enabled to veto such acquisition by any firm of which they disapproved for any reason whatsoever. The restrictive

covenant was inserted as part and parcel of petitioners' policy to exclude out-of-state competition. It was never intended as a mere run of the mill landlord and tenant arrangement. As the Court of Appeals for the Second Circuit stated in *United States* v. *Aluminum Company of America*, 148 F. 2d 416, 428:

> "Although in many settings it may be proper to weigh the extent and effect of restrictions in a contract against its industrial or commercial advantage, this is never to be done when the contract is made with intent to set up a monopoly."

The restrictive clause is an "abnormal" contract which tends "directly to suppress the conflict for advantage called 'competition,'—the play of the contending forces ordinarily engendered by an honest desire for gain." *United States* v. *American Linseed Oil Co., supra*, at p. 388. As it stands, should a corporate tenant desire to transfer or issue even one share of stock, it must first secure written permission from petitioners. Surely, this is no covenant ancillary or even relevant to a lease contract. The broadness of its scope alone belies its real purpose: to ferret out and prohibit any attempt by outside competitors to get a foothold in the Produce Building.

The conclusion is inescapable that petitioners, fearing the competition which Gamco's affiliation with Sawyer threatened, evicted Gamco from the Building in order to exclude that competition. For it should be stressed that Gamco was not attempting to enter a market where physical limitations of space rendered impossible the admission of another tenant trader: Gamco had been a tenant in the Produce Building for a year, holding space as a successor to an old and respected firm (R. 29). Accordingly, respondent submits that the Court of Appeals decided rightly that Gamco's ouster from the Building controlled by petitioners

represented an unwarranted exclusion of a competitor from a vital market in contravention of the Sherman Act. This decision is no extension of the scope of the anti-trust laws, nor is it a new application of such laws. As this Court recently stated:

> "It is indeed 'unreasonable, *per se*, to foreclose competitors from any substantial market.' . . . The anti-trust laws are as much violated by the prevention of competition as by its destruction." *United States* v. *Griffith, supra,* at page 107.

To the same effect are the holdings in *Associated Press* v. *United States, supra, American Tobacco Co.* v. *United States,* 328 U.S. 781; *International Salt Co.* v. *United States, supra.*

Accordingly, respondent respectfully submits that the determination of the issues raised by the within case involves no new interpretation of federal law, nor will the practical effect of the decision alter legal consequences for other litigants. Thus, there is no indication that the petition for writ of certiorari should be granted.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari in the within case should be denied.

Respectfully submitted,

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